

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 3/6/2012	(3) CONTACT/PHONE Bill Robeson, Senior Planner /781-5607	
(4) SUBJECT Hearing to consider an appeal by Barbara Mann of the Planning Commission's approval of a request by Tammy Murray for a Conditional Use Permit to establish a medical marijuana dispensary at 1409 South 4th Street in the community of Oceano.			
(5) RECOMMENDED ACTION Adopt and instruct the chairman to sign the resolution denying the appeal and affirming the decision of the Planning Commission approving Conditional Use Permit DRC2010-00070 based on the findings in Exhibit A and conditions in Exhibit B.			
(6) FUNDING SOURCE(S) Department budget	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <div style="display: flex; justify-content: space-between;"> <span>{ } Consent</span> <span>{ } Presentation Est. _____)</span> <span><input checked="" type="checkbox"/> Hearing (Time Est. 90 min)</span> <span>{ } Board Business (Time</span> </div>			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions    { } Contracts { } Ordinances        { } N/A		(12) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: { } 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(13) OUTLINE AGREEMENT REQUISITION NUMBER (OAR)		(14) W-9 <input checked="" type="checkbox"/> No        { } Yes	
(15) LOCATION MAP  Attached	(16) BUSINESS IMPACT STATEMENT?  No	(17) AGENDA ITEM HISTORY  <input checked="" type="checkbox"/> N/A    Date _____	
(18) ADMINISTRATIVE OFFICE REVIEW  Reviewed by Leslie Brown			
(19) SUPERVISOR DISTRICT(S) District 4 -			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Bill Robeson, Senior Planner

VIA: Ellen Carroll, Environmental Coordinator

DATE: 3/6/2012

SUBJECT: Hearing to consider an appeal by Barbara Mann of the Planning Commission's approval of a request by Tammy Murray for a Conditional Use Permit to establish a medical marijuana dispensary at 1409 South 4th Street in the community of Oceano.

## **RECOMMENDATION**

Adopt and instruct the chairman to sign the resolution denying the appeal and affirming the decision of the Planning Commission approving Conditional Use Permit DRC2010-00070 based on the findings in Exhibit A and conditions in Exhibit B.

## **DISCUSSION**

### **Background**

On November 3, 2011, the Planning Commission heard and approved a proposal by Tammy Murray for a Conditional Use Permit (CUP) to allow the establishment of a Medical Marijuana Dispensary (MMD). The proposed 470 square foot MMD will be located in an existing 931 square foot single family dwelling that is proposed to be converted into a commercial building consisting of 470 square feet of commercial space, 235 square feet of residential space and 226 square feet of shared employees/residential space. A new 75 square foot ADA compliant restroom will also be added. The proposed project is within the Commercial Service (CS) land use category.

In determining approval of the project, the Planning Commission used Section 22.30.020 of the Land Use Ordinance (LUO) that states, "The standards of this Chapter (4) may be waived or modified through Conditional Use Permit approval...". The Planning Commission found that the application of the special use standard from LUO Section 22.30.225 – General Retail Subsection c.1, was unnecessary and found it appropriate to waive this requirement. This LUO section that was waived, requires medical marijuana dispensaries to be located a minimum of 1,000 feet from any pre-school, elementary school, high school, library, park, playground, recreation or youth center. The determination and waiver were based on the location of the proposed medical marijuana dispensary in relation to a public park (Oceano Park). The actual distance of 922 feet between the dispensary and the park, while not complying with the 1,000 foot distance requirement of Section 22.30.225.c.1, was considered substantial. The significant separation between the proposed medical marijuana dispensary and the park, provided by Highway 1, the rail road, rail road right of way and 4<sup>th</sup> Street, was taken into account. There is also substantial topographic elevation change between the subject property and the public park, providing both a visual and physical barrier.

Along with the information considered above, the Planning Commission formulated a specific condition of approval (#13) that requires a noticed Planning Commission hearing to allow for review of the project after the first two years of operation. The purpose of this review is to determine condition compliance due to the sensitive nature of the land use and because this could be the first operational MMD in our County, where there is no land use history of this type or comparable uses. Another specific condition of approval

crafted for this project concerns Cal Trans requirements. This condition (#1, iv., d.) requires that the MMD have appointment-only visits at 15 minute intervals, with a maximum of 35 car visits per day. The intention of this condition is to regulate the amount of traffic flow into the area to an amount that meets Cal Trans thresholds of no concern. The last project specific component to be noted is the design of the existing residence into a dual commercial/residential unit. This allows for a full time on-site caretaker to oversee operations and security and provides a constant point of contact for neighbors and the Sheriff.

An appeal of the Planning Commission's decision was filed by Barbara Mann, on November 17, 2011. The basis for this appeal focuses upon location, distance and compatibility issues. The following is a list of the appeal issues raised by the appellant along with staff responses.

### **Appeal Issues**

#### **Issue #1: Violates 1,000 foot rule (see attached) – LUO Section 22.30.225 – General Retail subsection c.1**

**Staff Response:** After considering the proximity of the uses in the vicinity of the proposed MMD, the Planning Commission found that a waiver of the distance requirement of 1,000 feet was appropriate. The intent of establishing a set distance between uses was to separate uses that attract children like schools, recreation centers and libraries. The Planning Commission determined that the 922 foot separation was sufficient when considered in conjunction with physical and visual barriers that occurred between the project site and Oceano Park.

#### **Issue #2: Location is bordered by residential area where children are present.**

**Staff Response:** During the original adoption of the MMD Ordinance Amendment, consideration of the County's youth was discussed in detail at both the Planning Commission and Board of Supervisors' meetings. This is reflected in the approved Ordinance Amendment that requires adequate separation of a MMD from any pre-school, elementary school, high school, library, park, playground, recreation or youth center. Residential uses were not included in the uses that require separation. The residences that are in close proximity to the proposed MMD are located inside the Commercial Service (CS) land use category which also includes conforming uses such as mini-storage, storage yards and trucking facilities. When a legal non-conforming (to the land use category) residence is located in a Commercial Service area the compatibility between uses can become problematic. However, the LUO allows MMDs in the CS and Commercial Retail land use categories through the Minor Use Permit or CUP process.

The associated conditions of approval for this MMD are intended to provide for community safety. For example, the hours of operations (11:00 a.m. to 6:00 p.m.) are primarily during daylight hours, the security plan is designed to deter criminal activity and in this case, the applicant has provided an on-site caretaker to provide further security and act as a public contact.

#### **Issue #3: Other adjoining municipalities have outlawed this business endeavor, why can't the County be consistent?**

**Staff Response:** There have been two past MMD applications. The first was processed in Templeton and the second in Nipomo. These applications were both reviewed by the Planning Commission and evaluated on a case by case basis in conjunction with the applicable LUO standards. With these LUO standards in place that set the framework for establishing a MMD, the County has consistently processed and reviewed these projects based on their own merit and circumstances.

#### **Issue #4: The appellant is requesting a waiver of the appeal fee which is \$850.00.**

**Staff Response:** There are no provisions in the LUO or the adopted 2011-2012 County Fee Schedule that allow for the waiver of appeal fees in the inland portions of the County. The description of "fee waiver requests" in the Fee Schedule pertains to the waiver of fees for land use and construction permit fees. There is also mention of a waiver of appeal fees in the "County Coastal Zone" for projects that involving coastal resources, which does not apply in this case.

The appeal fee covers the cost of legal noticing and staff time for preparation of reports and presentations to the Board of Supervisors. The fee was spent processing the appeal that was requested by Barbara Mann. In fact, the fees that your Board sets for appeals do not reflect full cost recovery in order to make the process affordable to appellants.

#### **OTHER AGENCY INVOLVEMENT/IMPACT**

County Counsel has reviewed the resolution as to form and legal effect. See the attached Planning Commission staff report for other agency comments.

#### **FINANCIAL CONSIDERATIONS**

The appeal was processed using appeal fees paid by the appellant.

#### **RESULTS**

Denial of the appeal would approve the Conditional Use Permit and allow the Medical Marijuana Dispensary to be established as proposed. Upholding the appeal would deny the MMD and require findings for denial.

#### **ATTACHMENTS**

Attachment 1 - Resolution

Resolution for Adoption by the Board

Attachment 2 – Appeal Information

Appeal Form from Appellant

Attachment 3 – Planning Commission Action

Planning Commission Resolution

Attachment 4 – Minutes of the November 3, 2011 Planning Commission Meeting

Planning Commission Minutes

Attachment 5 – Planning Commission Record

Staff Report

Graphics

Correspondence